

CLARK LAW FIRM, P.C.
63 East Main Street, Suite #501
Mesa, Arizona 85201
(480) 844-0039
etc@clarkfirm.com
Ezra T. Clark, III (I.D. No. 14998)
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

GAVIN HADALLER,

Plaintiff,

Case No. _____

v.

NOTICE OF REMOVAL

SOLAR EMPLOYMENT SOLUTIONS, LLC,
an Arizona limited liability company; CLINT
TAYLOR and JANE DOE TAYLOR, husband
and wife; NORAH SILVA and JOHN DOE
SILVA, husband and wife,
Defendants.

Pursuant to 28 U.S.C. §§1331, 1441(a) and 1446(a), defendants hereby give notice of the removal of this civil action from the Kyrene Justice Court, Maricopa County, State of Arizona, to the United States District Court for the District of Arizona, on the grounds that jurisdiction in the United States District Court is appropriate under 28 U.S.C. §1331. Removal of the action arises from and is appropriate for the following reasons:

1. On January 25, 2016, plaintiff filed a civil action against defendants in the Kyrene Justice Court, Maricopa County, State of Arizona, cause number CC2016-015016. Pursuant to 28 U.S.C. §1446(a), a copy of the Complaint and Summons are attached hereto as Exhibits "A" and "B", respectively.

2. Plaintiff perfected service of the Complaint on defendants by delivering a copy of the Complaint to defendants Norah Silva on February 4, 2016 and Clint Taylor on February 5, 2016.

3. No further pleadings have been filed to date because defendants have chosen to remove to federal court.

PHILLIPS DAYES

NATIONAL EMPLOYMENT LAW FIRM
A Professional Corporation

3101 North Central Avenue, Suite 1500
Phoenix, Arizona 85012
Telephone: 1-800-JOB-LAWS
docket@phillipsdayeslaw.com

TREY DAYES, No. 020805

SEAN DAVIS, No. 030754

(602) 288-1610 ext. 301

Attorneys for Plaintiff

MARICOPA COUNTY, ARIZONA

KYRENE JUSTICE COURT

Gavin Hadaller;

Plaintiff,

vs.

Solar Employment Solutions, LLC, an
Arizona limited liability company; Clint
Taylor and Jane Doe Taylor, husband and
wife; Norah Silva and John Doe Silva,
husband and wife.

Case No.:

002016015016 RC

COMPLAINT

Plaintiff Gavin Hadaller, for his Complaint against Defendants, alleges as follows:

NATURE OF THE CASE

1. The Fair Labor Standards Act is designed to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers." 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. *See* 29 U.S.C. §§ 206(a), 207(a).

2. Employers must compensate employees for all work that employers permit

1 employees to perform. *See* 29 C.F.R. § 785.11. In such cases, it is the responsibility of
2 employers' management to ensure that work is not performed if management does not
3 desire for such work to be performed. *See* 29 C.F.R. § 785.13. Employers may not accept
4 the benefits of employees performing work without compensating the employees for their
5 work. *Id.*

6
7 3. Plaintiff brings this action against Defendants for unlawful failure to pay
8 overtime wages in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et*
9 *seq.* ("FLSA").

10 4. Plaintiff also bring this action against Defendants for unlawful failure to pay
11 failure to pay minimum wage in direct violation of the Fair Labor Standards Act (FLSA)
12 29 U.S.C. § 201 *et seq.* and the Arizona Minimum Wage Act, A.R.S. § 23-362, *et seq.*

13 5. Arizona law protects employees from employers seeking to pay less than
14 minimum wage.

15 6. Under Arizona law, employers are required to pay minimum wages, currently
16 set by the State at a rate of \$8.05 per hour.

17 7. An employer who fails to properly pay minimum wages to an employee is
18 liable to the employee in the amount of the wages owed, interest on the unpaid wages,
19 and as damages "an additional amount equal to twice the underpaid wages." A.R.S. § 23-
20 364(G).

21
22 8. Defendants had a consistent policy and practice of requiring Plaintiff to work
23 well in excess of forty (40) hours per week without paying them time and a half for hours
24 worked over forty (40) hours per week.

1 9. Plaintiff seeks to recover unpaid minimum wage, overtime compensation and
2 an equal amount of liquidated damages, including interest thereon, statutory penalties,
3 attorneys' fees, and costs pursuant to 29 U.S.C. § 216(b).

4 **JURISDICTION AND VENUE**

5
6 10. This Court has jurisdiction over the subject matter and the parties hereto as
7 the amounts involved in this matter are less than \$10,000.

8 11. Venue is proper under as the events giving rise to this cause of action
9 occurred in the Kyrene district.

10 **PARTIES**

11 12. At all times material hereto, Plaintiff was a resident of Maricopa County,
12 Arizona.

13 13. At all times material hereto, Solar Employment Solutions, LLC was
14 incorporated in the State of Arizona with its principal place of business in Maricopa
15 County, Arizona.

16 14. Upon information and belief, at all times material hereto, Defendant Clint
17 Taylor, was and continues to be a resident of Maricopa County, Arizona.

18 15. Jane Doe Taylor is Clint Taylor's wife. Clint and Jane Doe Taylor have
19 caused events to take place giving rise to this Complaint as to which their marital
20 community is fully liable.

21 16. Upon information and belief, at all times material hereto, Defendant Norah
22 Silva, was and continues to be a resident of Maricopa County, Arizona.

23 17. John Doe Silva is Norah Silva's husband. Norah and John Doe Silva have
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1 caused events to take place giving rise to this Complaint as to which their marital
2 community is fully liable.

3 **FACTUAL BACKGROUND**

4 18. Solar Employment Solutions, LLC specializes in residential and commercial
5 solar electric systems.

6 19. Solar Employment Solutions, LLC hired Plaintiff in November of 2014 as a
7 canvassing coordinator.

8 20. Plaintiff's job duties and responsibilities included developing and
9 implementing policies for which Solar Employment Solutions, LLC would recruit new
10 employees.

11 21. Plaintiff also was responsible for performing contacts and follow ups with the
12 clientele of Solar Employment Solutions, LLC.

13 22. Plaintiff also performed corporate outreach tasks to develop partnerships with
14 other businesses to create referral streams of business for Solar Employment Solutions,
15 LLC.

16 23. Solar Employment Solutions, LLC compensated Plaintiff with a weekly
17 salary of \$300 per week.

18 24. Defendants withheld taxes out of Plaintiff's paycheck pursuant to IRS
19 regulations.

20 25. Plaintiff's regular schedule was six days per week and he would have to work
21 every other Sunday.

22 26. Plaintiff would average approximately 72.5 hours of work ever week.
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1 27. Each and every week that Plaintiff has worked his regular schedule, he has
2 worked over forty hours in a week.

3 28. By improperly classifying Plaintiff as an exempt employee, Defendants are
4 depriving Plaintiff upwards of twenty hours of overtime pay each and every week.

5 29. Defendants did not pay Plaintiff overtime.

6 30. Plaintiff was not a commissioned employee.

7 31. Commissions did not consist of more than half of Plaintiff's weekly earnings.

8 32. As Plaintiff worked in excess of seventy hours per week for Defendants and
9 was paid a salary of approximately \$300 per week, the wages paid by Defendants failed
10 to meet or exceed the minimum wage required by either the FLSA or by Arizona's
11 Minimum Wage Act, A.R.S. § 23-362, *et seq.*

12 33. In all but one week of Plaintiff's employment with Solar Employment
13 Solutions, LLC, he earned less than \$455 per week.

14 34. Upon information and belief, and consistent with the information available
15 from the Arizona Corporation Commission, Defendants Clint Taylor and Norah Silva
16 were and are the owners of Solar Employment Solutions, LLC
17

18 35. At all relevant times, Plaintiff was an "employee" of Solar Employment
19 Solutions, LLC.

20 36. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendants.

21 37. At all relevant times, each of the Defendants was and continues to be an
22 "employer" as defined in 29 U.S.C. § 203(d).

1 38. At all relevant times, each of the Defendants was and continues to be an
2 “employer” as defined in A.R.S. §§ 23-350 or 23-362(B) (Version 2).

3 39. Each of the Defendants should be deemed an “employer” for purposes of the
4 FLSA including, without limitation, 29 U.S.C. § 216.

5 40. Each of the Defendants should be deemed an “employer” for purposes of the
6 Arizona Wage Laws including, without limitation, A.R.S. §§ 23-350 or 23-362(B)
7 (Version 2).

8 41. Defendant Clint Taylor is deemed an “employer” for purposes of the FLSA,
9 including, without limitation, 29 U.S.C. §216, and is co-equally liable with Solar
10 Employment Solutions, LLC.

11 42. Defendant Norah Silva is deemed an “employer” for purposes of the FLSA,
12 including, without limitation, 29 U.S.C. §216, and is co-equally liable with Solar
13 Employment Solutions, LLC.

14 43. Defendant Clint Taylor is deemed an “employer” for purposes of the Arizona
15 Wage Laws, including, without limitation, A.R.S. §§ 23-350 or 23-362(B) (Version 2),
16 and is co-equally liable with Solar Employment Solutions, LLC.

17 44. Defendant Norah Silva is deemed an “employer” for purposes of the Arizona
18 Wage Laws, including, without limitation, A.R.S. §§ 23-350 or 23-362(B) (Version 2),
19 and is co-equally liable with Solar Employment Solutions, LLC.

20 45. All Defendants are co-equally liable for all matters.
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1 46. Defendant Clint Taylor made all decisions on the daily activities of his
2 employees and is therefore individually liable under the FLSA and the Arizona Wage
3 Laws.

4 47. Defendant Clint Taylor makes all decisions regarding pay policies for Solar
5 Employment Solutions, LLC and is therefore individually liable under the FLSA and the
6 Arizona Wage Laws.

7 48. Defendant Norah Silva made all decisions on the daily activities of her
8 employees and is therefore individually liable under the FLSA and the Arizona Wage
9 Laws.
10

11 49. Defendant Norah Silva makes all decisions regarding pay policies for Solar
12 Employment Solutions, LLC and is therefore individually liable under the FLSA and the
13 Arizona Wage Laws.

14 50. Defendant Clint Taylor exerted financial control over Solar Employment
15 Solutions, LLC and is therefore individually liable under the FLSA and the Arizona
16 Wage Laws.

17 51. Defendant Clint Taylor exerted operative control over Solar Employment
18 Solutions, LLC and is therefore individually liable under the FLSA and the Arizona
19 Wage Laws.
20

21 52. Defendant Norah Silva exerted financial control over Solar Employment
22 Solutions, LLC and is therefore individually liable under the FLSA and the Arizona
23 Wage Laws.
24
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1 53. Defendant Norah Silva exerted operative control over Solar Employment
2 Solutions, LLC and is therefore individually liable under the FLSA and the Arizona
3 Wage Laws.

4 54. Defendant Clint Taylor has the power to close Solar Employment Solutions,
5 LLC

6 55. Defendant Norah Silva has the power to close Solar Employment Solutions,
7 LLC

8 56. Defendant Clint Taylor has the power to hire and fire employees.

9 57. Defendant Norah Silva has the power to hire and fire employees.

10 58. Defendant Clint Taylor hired managerial employees.

11 59. Defendant Norah Silva hired managerial employees.

12 60. On information and belief, Defendant Clint Taylor maintained employment
13 records.

14 61. On information and belief, Defendant Norah Silva maintained employment
15 records.

16 62. On information and belief, Defendant Clint Taylor dictated the corporate
17 message in pending labor investigations.

18 63. On information and belief, Defendant Norah Silva dictated the corporate
19 message in pending labor investigations.

20 64. Defendant Clint Taylor profited from the violations detailed in this
21 complaint.

22 65. Defendant Norah Silva profited from the violations detailed in this complaint.
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1 66. At all times material to this action, Solar Employment Solutions, LLC was
2 and continues to be an "enterprise engaged in commerce or in the production of goods for
3 commerce" as defined by 29 U.S.C. § 203(s)(1).

4 67. Solar products Defendants used to provide their services were manufactured
5 outside the state of Arizona.

6 68. Plaintiff handled supplies that originated out of state.

7 69. Plaintiff engaged in commerce or in the production of goods for commerce
8 and is therefore individually covered under the FLSA pursuant to 29 U.S.C. §§206(a),
9 207(a)(1), 212(c).

10 70. On information and belief, at all relevant times, the annual gross revenue of
11 Defendants exceeded, and continues to exceed, \$500,000.00.

12 71. Plaintiff was a non-exempt employee.

13 72. Defendants managed, supervised, and directed all aspects of Plaintiff's job
14 duties and responsibilities.

15 73. Plaintiff's primary duty was not the performance of work requiring advanced
16 knowledge in a field of science or learning that was acquired by a prolonged course of
17 specialized intellectual instruction.

18 74. Plaintiff did not perform work requiring advanced knowledge.

19 75. Plaintiff did not perform work in a field of science or learning.

20 76. Plaintiff did not have an advanced degree and was not required to have one to
21 perform the work.

1 77. The knowledge required to perform the work is not acquired by a prolonged
2 course of specialized intellectual study.

3 78. Plaintiff's work did not require consistent exercise of discretion and
4 judgment.

5 79. Plaintiff's work did not require him to analyze, interpret, or make deductions
6 from varying facts or circumstances.

7 80. Plaintiff's work did not require invention, imagination, originality, or talent.

8 81. Plaintiff's work did not require creative or original analysis and
9 interpretation.
10

11 82. On January 5, 2015 Plaintiff approached Defendants and requested that
12 Defendants compensate him properly. Specifically Plaintiff told Defendants that he
13 should be paid at least minimum wage and overtime for all hours worked over forty in a
14 week.

15 83. Defendant Clint Taylor chastised Plaintiff for attempting to discuss his wages
16 and told Plaintiff to never bring up the topic again.

17 84. On February 16, 2015, after receiving another pay check with less hours than
18 he should have been paid, below minimum wage and without any overtime, Plaintiff
19 again addressed the issue with Defendant Clint Taylor.
20

21 85. Later that day, Defendant Clint Taylor terminated Plaintiff, solely in
22 retaliation for Plaintiff requesting his proper wages under the FLSA.
23
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1 86. Plaintiff has retained the law firm of Phillips Dayes National Employment
2 Law Firm to prosecute his claims against Defendants on his behalf and has agreed to pay
3 reasonable costs and attorney's fees in the prosecution of this matter.

4
5 **COUNT ONE**
OVERTIME VIOLATION—29 U.S.C. § 207

6 87. Plaintiff incorporates and adopts the preceding paragraphs as if fully set
7 forth herein.

8 88. While employed by Defendants, Plaintiff regularly worked multiple hours of
9 overtime per week.

10 89. Plaintiff was a non-exempt employee.

11 90. Defendants have intentionally and willfully failed and refused to pay Plaintiff
12 overtime according to the provisions of the FLSA.

13 91. On information and belief, Defendants further engaged in a widespread
14 pattern and practice of violating the provisions of the FLSA by failing to pay Plaintiff in
15 accordance with 29 U.S.C. § 207.

16 92. As the direct and proximate result of Defendants' violations of the FLSA,
17 Plaintiff has suffered damages by failing to receive compensation in accordance with 29
18 U.S.C. § 207.

19 93. Pursuant to 29 U.S.C. § 216, Defendants are liable to Plaintiff for an amount
20 equal to one and one-half times his regular pay rate for each hour of overtime worked per
21 week.
22
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1 94. In addition to the amount of unpaid wages owed to Plaintiff, he is also
2 entitled to recover an additional equal amount as liquidated damages pursuant to 29
3 U.S.C. § 216(b).

4 95. On information and belief, Defendants' conduct in failing to properly
5 compensate Plaintiff, in violation of the FLSA, was willful.

6 96. Defendants have not made a good faith effort to comply with the FLSA.
7 Plaintiff has been required to bring this action to recover his overtime compensation, and
8 his statutory liquidated damages, and as the direct and foreseeable result of Defendants'
9 conduct, Plaintiff has incurred costs and attorneys' fees.

10 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
11 favor against Defendants:
12

- 13 a. Awarding Plaintiff overtime compensation in the amount due for all of
14 his time worked in excess of forty (40) hours per week at a pay rate
15 equal to one and one-half times Plaintiff's regular rate of pay while at
16 work for Defendants, in an amount proved at trial;
17 b. Awarding Plaintiff liquidated damages in an amount equal to the
18 overtime award;
19 c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of the
20 litigation pursuant to 29 U.S.C. § 216(b);
21 d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
22 amounts awarded under subsections (a) and (b) above from the date of
23 the payment due for that pay period until paid in full;
24
25

- 1 e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on
2 all awards from the date of such award until paid in full; and
3 f. For such other and further relief as the Court deems just and proper.
4

COUNT TWO

MINIMUM WAGE VIOLATION—29 U.S.C. § 206

5
6 97. Plaintiff incorporates and adopts the preceding paragraphs as if fully set
7 forth herein.

8 98. Pursuant to 29 U.S.C. § 206, Defendants were required to pay Plaintiff at
9 least the amount of the federal minimum wage, when those wages were due, for each
10 hour Plaintiff worked.

11 99. Defendants willfully failed and refused to pay Plaintiff at least the amount of
12 the federal minimum wage when those wages were due.
13

14 100. Plaintiff is entitled to collect the difference between the wages he received
15 and the wages due, over the past three years, in an amount to be proved at trial, in
16 addition to liquidated damages in the same amount, together with costs, disbursements,
17 and reasonable attorneys' fees, pursuant to 29 U.S.C. § 216(b).

18 101. Plaintiff has been required to bring this action to recover his federal
19 minimum wages remaining due and unpaid, and his statutory liquidated damages, and as
20 the direct and foreseeable result of Defendants' conduct, Plaintiff has incurred costs and
21 attorneys' fees.
22

23 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
24 favor and against Defendants:
25

- a. Awarding Plaintiff compensation in the amount due for unpaid minimum wages in an amount proved at trial;
- b. Awarding Plaintiff liquidated damages in an amount equal to the award;
- c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of the litigation pursuant to 29 U.S.C. § 216(b);
- d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all amounts awarded under subsections (a) and (b) above from the date of the payment due for that pay period until paid in full;
- e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all awards from the date of such award until paid in full; and
- f. For such other and further relief as the Court deems just and proper.

COUNT THREE

MINIMUM WAGE VIOLATION—A.R.S §§ 23-363, -364

101. Plaintiff incorporates and adopts the preceding paragraphs as if fully set forth herein.

102. Pursuant to A.R.S. § 23-363, Defendants were required to pay at least the amount of the Arizona minimum wage, when those wages were due, for each hour Plaintiff worked.

103. Defendants willfully failed and refused to pay Plaintiff at least the amount of the Arizona minimum wage when those wages were due.

104. Plaintiff is entitled to collect the difference between the wages they received and the wages due, over the past two years, in an amount to be proved at trial, together

1 with an additional amount equal to twice the underpaid wages, plus, without limitation,
 2 interest, costs, and attorney fees pursuant to A.R.S. § 23-364(G).

3 105. Plaintiff has been required to bring this action to recover his Arizona
 4 minimum wages remaining due and unpaid, and his statutory damages, and as the direct
 5 and foreseeable result of Defendants' conduct, Plaintiff has incurred costs and attorneys'
 6 fees.

7
 8 **COUNT FOUR**
RETALIATION IN VIOLATION OF THE FLSA

9
 10 105. Plaintiffs incorporate and adopt the preceding paragraphs as if fully set
 11 forth herein.

12 106. As set forth above, Plaintiffs were retaliated against for exercising their
 13 rights under the FLSA.

14 107. Pursuant to FLSA, 29 U.S.C. § 215(a)(3), it is unlawful to discharge or in
 15 any other manner discriminate against any employee because such employee has filed a
 16 complaint or instituted or caused to be instituted any proceedings under or related to this
 17 chapter, or has testified or is about to testify in any such proceedings, or has served or is
 18 about to serve on an industry committee..."

19 108. Such conduct not only includes formal complaints with a court or the
 20 Department of Labor, but also informal complaints to an employer. *See Williamson v.*
 21 *Gen. Dynamics Corp.*, 208 F.3d 1144, 1151 (9th Cir. 2000).

22 109. Plaintiffs have suffered emotional distress, mental anguish, lost past and
 23 future wages as a result of Defendants' retaliatory conduct.

1 110. As a result of Defendants' retaliatory conduct, Plaintiff is entitled to
2 compensatory damages, punitive damages, attorneys' fees and costs, and all other legal or
3 equitable relief permitted under 29 U.S.C. § 216.


4 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
5 favor, and against Defendants:

- 6 a. Awarding Plaintiff compensation in the amount due for unpaid
7 minimum wages in an amount to be proved at trial;
8 b. Awarding Plaintiff an additional amount equal to twice the underpaid
9 wages;
10 c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of
11 litigation pursuant to A.R.S. § 23-364(G);
12 d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
13 amounts awarded under subsections (A) and (B) above from the date of
14 the payment due for that pay period until paid in full;
15 e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on
16 all awards from the date of such award until paid in full; and
17 f. For such other and further relief as the Court deems just and proper.
18

19 Dated: January 22, 2016
20

21 Respectfully submitted,

22 **PHILLIPS DAYES NATIONAL EMPLOYMENT LAW FIRM PC**

23 By: 
24 Trey Dayes
25 Sean Davis
Attorney for Plaintiff

PHILLIPS DAYES
NATIONAL EMPLOYMENT LAW FIRM
A Professional Corporation

3101 North Central Avenue, Suite 1100
Phoenix, Arizona 85012
Telephone: 1-800-JOB-LAWS
docket@phillipsdayeslaw.com
TREY DAYES, No. 020805
SEAN C. DAVIS, No. 030754
seand@phillipsdayeslaw.com
Direct: (602) 288-1610 ext. 432
Attorneys for Plaintiff

**MARICOPA COUNTY, ARIZONA
ENCANTO JUSTICE COURT**

Gavin Hadaller;

Plaintiff,

vs.

Solar Employment Solutions, LLC, an Arizona
limited liability company; Clint Taylor and Jane
Doe Taylor, husband and wife; Norah Silva and
John Doe Silva, husband and wife.

Case No.:

CC2016-015016

SUMMONS

THE STATE OF ARIZONA TO THE ABOVE-NAMED DEFENDANT(S):

1. **YOU ARE SUMMONED** to respond to this complaint by filing a written ANSWER with this Court and by paying the required fee. If you cannot afford to pay the required fee, you may request that the Court either waive or defer the fee.
2. If you were served with this summons in the State of Arizona, the Court must receive your answer within twenty (20) calendar days from the date you were served. If you were served outside the State of Arizona, the Court must receive your answer within thirty (30) calendar days from the date you were served. If the last day is a Saturday, Sunday, or legal holiday, you will have until the next working day to file your answer. When calculating time, do not count the day you were served with the summons.
3. Your answer must be in writing.
(a) You may obtain an answer form from this Court.

(b) You may also obtain an answer form from the Form section of the Maricopa County Justice Courts website at <http://justicecourts.maricopa.gov>. The direct link is:
http://justicecourts.maricopa.gov/Forms/cv_Answer.pdf

4. Provide a copy of your answer to the Plaintiff(s) or to the Plaintiff's attorney in accordance with JCRCP Rule 120.
5. **IF YOU FAIL TO FILE A WRITTEN ANSWER WITH THIS COURT WITHIN THE TIME INDICATED ABOVE, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.**

REQUESTS FOR REASONABLE ACCOMODATIONS FOR PERSONS WITH DISABILITIES MUST BE MADE TO THE COURT AT LEAST 3 JUDICIAL DAYS IN ADVANCE OF ANY SCHEDULED HEARING

Date: _____

11/25/16

Jh P. McCon

Justice of the Peace



*You are required to keep the court advised of your current address and contact phone number.
The clerk can provide you with a Notice of Change of Address form.*